

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 96 of 2005

1. Bhuneshwar Prasad Soni S/o Late Shankhlal Soni, aged about 50 years, R/o Bazarpara, Patna, P.S. Patna, District Korla (CG)

---- Applicant

Versus

1. The State Of Chhattisgarh, through P.S. Patna, District Korla, CG.
2. Bach Rai S/o Johan Lal, age 54 years, R/o Village Premnagar, PS Premnagar, Tehsil Surajpur, District Surguja (CG)

---- Non-applicant

For Applicant	:	Shri AK Prasad, Advocate.
For Non-applicant No.1	:	Shri Rahul Tamaskar, PL.
For Non-applicant No.2	:	Shri JK Shastri, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

04/05/2017

This revision arises out of the judgment and order dated 20.1.2005 passed by Additional Sessions Judge, Baikunthpur, Distt. Korla in Cr.A.No.280/03 allowing the revision of non-applicant No.2/accused against the judgment of his conviction and order of sentence dated 24.10.2003 passed by Judicial Magistrate First Class, Baikunthpur in Criminal Case No.183/03 whereby the trial Court had convicted him under Sections 279, 337 & 304A of IPC and sentenced to undergo SI for three months, fine of Rs.500/-; RI for one year, fine of Rs.1000/- under Sections 337 ad 304A of IPC respectively. However, he has not been sentenced separately under Section 279 of IPC.

02. As per the prosecution case, on 25.8.2002 deceased Suraj Soni was going on Hero Honda motorcycle from Patna to Baikunthpur and PW-1 Amit Soni was sitting as a pillion rider. The said vehicle had a head on collision with another Hero Honda motorcycle bearing registration No. MP 27 E-3268 which was being ridden by non-applicant No.2/accused and on which DW-2 Shyamlal was sitting as a pillion rider. In the said accident, Suraj Soni suffered grievous injuries and while being shifted to hospital he expired on the way on 26.8.2002 whereas PW-1 Amit Soni also suffered some injuries. FIR (Ex.P/6) was registered against the rider of the motorcycle under Sections 279 and 337 of IPC and after death of Suraj Soni while filing charge sheet offence under Section 304A of IPC was also added against non-applicant No.2/accused. The trial Court framed charge against the accused under Sections 279, 337 and 304A of IPC.

03. So as to hold the accused guilty the prosecution examined as many as 8 witnesses in all. Statement of the accused was recorded under Section 313 of CrPC in which he denied the circumstances appearing against him and pleaded innocence and false implication. In defence, he examined three witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material on record, by the judgment dated 24.10.2003 convicted him under Sections 279, 337 & 304A of IPC and sentenced to undergo SI for three months, fine of Rs.500/-; RI for one year, fine of Rs.1000/- under Sections 337 and 304A of IPC respectively. However, he has not been sentenced separately under Section 279 of IPC. The said judgment was subjected to challenge in appeal and the appellate

Court, considering the nature and quality of evidence, held that the prosecution has not been able to prove guilt of the accused beyond reasonable doubt and acquitted him of all the charges. Hence this revision.

05. Counsel for the applicant/complainant submits that the appellate Court has erred in law while acquitting the accused of all the charges. It ought to have considered the evidence available on record from which is apparent that the vehicle in question was being ridden by the accused in a most rash and negligent manner which caused the accident leading to death of the deceased. He submits that had the vehicle been ridden properly by the accused, the accident would not have occurred. Referring to the statement of PW-1 Amit Soni, pillion rider of the vehicle of the deceased, he submits that the deceased was riding the vehicle slowly and cautiously.

06. On the other hand, supporting the impugned judgment it has submitted by Shri Shastri, counsel for the non-applicant No.2/accused that it was an unfortunate accident where both the vehicles had a head on collision and in which Suraj Soni expired. He submits that in the said accident, the accused and DW-2 Shyamlal also suffered injuries. He submits that DW-2 Shyamlal has also stated that the deceased was riding the motorcycle in a rash and negligent manner.

07. State counsel has duly assisted the Court.

08. Heard counsel for the respective parties and perused the material on record.

09. PW-1 Amit Soni, pillion rider of the vehicle which was being ridden by the deceased, has stated that non-applicant No.2/accused by riding his motorcycle in a rash and negligent manner dashed their vehicle as a result of which deceased suffered injuries on his head and other parts of the body and he also sustained some injury. While the deceased was being taken to hospital with the help of Javed and Umesh, he expired on the way. He has stated that at the relevant time the non-applicant No.2/accused was drunken. PW-2 Bhuneshwar Prasad Soni, father of the deceased, was not present at the place of occurrence. PW-3 Javed and PW-4 Umesh Gupta are the persons who helped in shifting the deceased to hospital. PW-5 Dr. Rameshwar Sharma medically examined the deceased and noticed laceration of mouth cavity along upper lip, multiple punctured wound on head, blackening and swelling of both eyes, fracture of right thigh and laceration over right knee. In his opinion, the injuries were caused by heavy and hard object. PW-7 Dr. AK Sharma medically examined PW-1 Amit Soni and noticed simple injuries on his body which appeared to have been caused by hard and blunt object. PW-8 RN Sharma, investigating officer, has supported the prosecution case.

10. DW-1 SN Sharma has stated that report was also lodged against deceased Suraj Soni under Sections 279 and 337 of IPC, however, the same was closed as Suraj Soni expired. DW-2 Shyamlal, pillion rider of the vehicle of the accused, has stated that the accused was riding the vehicle slowly and cautiously whereas it was the deceased Suraj Soni who was riding his motorcycle in a rash and negligent manner. He has stated that in the said accident the accused also suffered injuries on his

head and other parts of the body and remained hospitalized for 5-6 days and he too sustained injury on his ribs. At the spot, people had gathered after the incident and they took the deceased in a jeep to hospital. He has denied the suggestion that the accused at the relevant time was drunken and was riding the vehicle rashly and negligently. DW-3 Chandraprakash has also stated that the vehicle was being ridden by non-applicant No.2/accused slowly, however, the vehicle coming from the opposite side was being ridden rashly and negligently by the deceased.

11. Close scrutiny of the evidence makes it clear that on 25.8.2002 there was head on collision between the motorcycle of the deceased Suraj Soni and that of the accused which resulted in death of Suraj Soni and injuries to the accused as well as pillion riders. Though Pws 1, 3 & 4 have stated that at the time of accident the non-applicant/accused was drunken, however, there is no mention about the said fact in the FIR lodged by PW-1. Further, if the accused was drunken, the prosecution ought to have produced his medical report confirming the said fact, but no medical report of the accused is there on record. On the one hand, the prosecution witnesses have stated categorically that the unfortunate accident was the result of rash and negligent riding of motorcycle by the accused and on the other, the defence witnesses have also remained consistent while deposing in the Court that the accused was riding the vehicle with a moderate speed and in fact, it was the deceased who was responsible for the accident. Admittedly, present is a case of head-on collision and report was also lodged against the deceased under Sections 279 and 337 of

IPC, but the same was subsequently closed on account of death of the deceased. Thus, considering the overall facts and circumstances of the case, this Court is of the opinion that the prosecution has not been able to prove beyond all reasonable doubt that it is the non-applicant No.2/accused who was riding the motorcycle rashly and negligently on the public way endangering the human life or by his rash and negligent act caused death of the deceased.

That apart, the settled legal position is that if two reasonable conclusions are possible on the basis of evidence on record, the Court should not disturb the finding of acquittal recorded by the Court below. Furthermore, the scope of interference in revision against acquittal is very limited and it can be made only if the finding recorded by the Court below is per se illegal, perverse or arrived at by ignoring the relevant material and taking into account the irrelevant ones. In the present case, no such circumstance is there requiring interference by this Court with the finding of acquittal recorded by the Court below. Being so, the same is hereby affirmed.

12. In the result, the revision petition being without any substance is liable to be dismissed and it is dismissed as such. The judgment of the appellate Court dated 20.1.2005 is hereby affirmed.

Sd/

(Pritinker Diwaker)

Judge